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November 15, 1999

Mr. Frederick Grittner
Clerk of Court
Minnesota Supreme Court
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

NOV 16 1999

FILED

Re: Vitamins Class Action Litigation
Court File No.: C-699-1909
Our File No.: 12797/20246A

Dear Mr. Grittner:

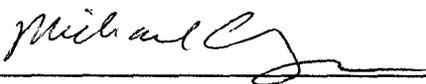
Enclosed herewith for filing in the above-referenced matter, please find enclosed the following:

1. Memorandum of Denise DeNardi in Support of Defendants' Motion to Transfer and Consolidate Multi-District Vitamin Antitrust Class Action Litigation; and
2. Affidavit of Service.

By copy of this correspondence, all counsel of record have been served with same.

Very truly yours,

RIDER, BENNETT, EGAN & ARUNDEL, LLP

By 
Michael W. Unger

MWU/cjs
Enclosures
cc (w/enclosures):

Chief Justice Kathleen A. Blatz
Ms. Sue K. Dosal, State Court Administrator
All Counsel of Record

NOV 16 1999

STATE OF MINNESOTA

IN THE SUPREME COURT

C6-99-1909

FILED

CASE TITLE:

In re: Minnesota Vitamin Antitrust
Litigation

**MEMORANDUM OF
DENISE DeNARDI IN SUPPORT
OF DEFENDANTS' MOTION TO
TRANSFER AND CONSOLIDATE
MULTI-DISTRICT VITAMIN ANTITRUST
CLASS ACTION LITIGATION**

TO: CHIEF JUSTICE OF THE MINNESOTA SUPREME COURT

Plaintiff Denise DeNardi hereby joins¹ in the Defendants' Motion to consolidate all four of the vitamin antitrust class actions pending in Minnesota against these Defendants. These matters should all proceed in Hennepin County, which is where the first-filed of these actions, DeNardi v. F. Hoffman La Roche, Ltd., et al., No. 99-3123 (Hennepin Cty. Dist. Ct.) has been pending since March, 1999.

The Defendants, in support of their Motion, have demonstrated that Minnesota's Antitrust Law, as well as considerations of fairness and judicial economy, counsel strongly in favor of the consolidation of these matters. Plaintiff DeNardi agrees and further agrees that consolidation would not prejudice any party. Plaintiff DeNardi submits that principles of comity and judicial economy favor transfer of all pending cases to the Fourth Judicial District for consolidation with the DeNardi proceedings.

¹ As we understand the Motion, it is to transfer all cases to the Fourth Judicial District for consolidated handling. The procedure in the Fourth Judicial District would ordinarily mean that the Chief Judge would then determine the precise manner of consolidation based upon the case circumstances, input of the parties, and consideration of the allocation of resources in the Fourth Judicial District. If Defendants' Motion is also meant to have this Court make the intra-district assignment, we do not agree that this would be warranted or proper under the circumstances.

FACTUAL AND PROCEDURAL BACKGROUND

There are four indirect purchaser class actions pending against the Defendants in Minnesota, each arising out of a conspiracy among the Defendants to fix prices in the vitamin market. See Mem. Supp. Mot. Transfer, at 3-5.

Two of these actions, Custom Nutrition, Inc. and Brinton Veterinary Supply, Inc. v. F. Hoffman La Roche, Ltd., et al., No. 34-C4-99-01274 (Kandiyohi Cty. Dist. Ct.), and Big Valley Milling, Inc. v. F. Hoffman La Roche, Ltd., et al., No. C1-99-405 (Chippewa Cty. Dist. Ct.), were filed less than two months ago, and have not, to the knowledge of Plaintiff's counsel, progressed into any substantive litigation phase. There has similarly been no activity, to our understanding, in connection with the Murr lawsuit, Murr v. F. Hoffman La Roche, Ltd., et al., No. 19-C9-99-9673 (Dakota Cty. Dist. Ct.), in which an amended complaint was only served and filed in late September.

The DeNardi litigation, by contrast, has advanced significantly since it was filed in early March 1999. Counsel for Ms. DeNardi, in conjunction with counsel for plaintiffs in similar antitrust cases in other states, and with counsel for the Defendants, has participated since May 1999 in an Alternative Dispute Resolution ("ADR") proceeding at the direction of the Superior Court for the District of Columbia. See Exhibit A hereto (Pretrial Order No. 1, Giral, et al. v. F. Hoffman-LaRoche, et al., No. 98 CA 7467 (D.C. Sup. Ct.) (dated May 28, 1999)).² Pursuant to that Order, plaintiff DeNardi—through counsel—has engaged in extensive, good faith efforts to resolve as many outstanding issues with the Defendants as possible. Those efforts have included agreed-upon exchanges of confidential information; agreements regarding discovery, service of process and

² Giral, filed on September 30, 1998, is a multistate indirect purchaser case involving plaintiffs from every jurisdiction in which private parties have standing to bring indirect purchaser class actions. Pursuant to court orders and agreements among the parties, including stipulated orders in the DeNardi matter, nearly all of the indirect purchaser actions now pending in the United States are being coordinated and consolidated for certain pretrial proceedings in the Giral case.

scheduling; several face-to-face conferences; and dozens of telephone conferences involving numerous attorneys for both sides. Plaintiffs in Giral, including DeNardi, have obtained approximately 200,000 pages of documents from Defendants through informal discovery, and have devoted considerable time of both attorneys and expert economists in preparing this matter for trial or, alternatively, for settlement negotiations.

These efforts in the Giral litigation have been acknowledged and mirrored by stipulation in Hennepin County. Judge Hedlund has approved several stipulated Pretrial Orders which recognize the progress being made under the Giral framework, and which have stayed proceedings in Minnesota until such point as the ADR process is either completed or terminated as unsuccessful. See Exhibit B hereto (Stipulated Extension of Stay Pending ADR, DeNardi v. F. Hoffman La Roche, Ltd., filed Oct. 29, 1999).

ARGUMENT

This Court has long embraced the principle, rooted in comity, that “the court which first acquires jurisdiction” of an action “between the same parties, on the same subject, and to test the same rights” is the exclusive forum in which such disputes may proceed. See State ex rel. Minnesota Nat’l Bank of Duluth v. District Court, Fourth Judicial District, 195 Minn. 169, 173 (1935); see also Minnesota Mutual Life Ins. v. Anderson, 410 N.W.2d 80, 81-82 (Minn. Ct. App. 1987). Federal courts have endorsed and applied the same rules. See Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co., 342 U.S. 180, 183-4 (1951) (approving dismissal of later-filed suit); Northwest Airlines, Inc. v. American Airlines, Inc., 989 F.2d 1002, 1005 (8th Cir. 1993) (absent “compelling circumstances”, the “first-filed rule shall apply”); William Gluckin & Co. v. International Playtex Corp., 407 F.2d 177, 178 (2nd Cir. 1969). This principle, while perhaps not dispositive with respect

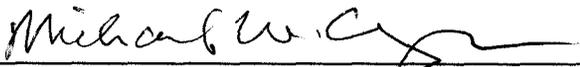
to the Defendants' motion, strongly supports the transfer of the Murr, Custom Nutrition and Big Valley Milling cases to the Fourth Judicial District and their consolidation with DeNardi.

These four putative class actions all involve substantially the same defendants and either identical or over-lapping classes of plaintiffs. See Defs.' Mem., at 4-5. The claims in each case all involve the same price-fixing conspiracy, and the same core factual and legal issues. DeNardi was filed first. DeNardi has been proceeding through the ADR process into significant discovery and fact development, and is well-situated to provide the framework within which the similar litigation may be addressed and resolved.³ In such circumstance, consolidation of these matters in the lead forum would advance and serve the interests of comity as articulated by this Court, and should be ordered here.

CONCLUSION

For the foregoing reasons, plaintiff Denise DeNardi submits that Defendants' Motion to Transfer and Consolidate the pending vitamins antitrust litigation in the Fourth Judicial District should be granted.

RIDER, BENNETT, EGAN & ARUNDEL, LLP

By 

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DATED: November 15, 1999
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³ To be sure, it will be up to the Chief Judge in the Fourth Judicial District to make a determination as to how these cases, if consolidated, will proceed. The sole, and straightforward, issue now before this Court is simply whether the cases should be brought together into one judicial district to permit coordinated handling.

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Carole J. Stephens of the County of Hennepin, City of Plymouth, State of Minnesota, being duly sworn, says that on November 15, 1999, she served the annexed:

Memorandum of Denise DeNardi in Support of Defendants' Motion to Transfer and Consolidate Multi-District Vitamin Antitrust Class Action Litigation

on the attorneys below-named in this action, by mailing to said attorneys a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota directed to the following:

See attached Service List.

Carole J. Stephens
Carole J. Stephens

Subscribed and sworn to before me on
November 15, 1999.

Kathleen M. Dodaro
Notary Public

456564.1

